IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2652 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

SULTAN @ MUNNA AKBAR SAIYED

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 2652 of 2003

MR MM TIRMIZI for Petitioner No. 1

MR SJ DAVE APP for Respondent No. 1

MR BUDDHBHATTI for Respondent No. 2

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 03/05/2003

C.A.V. JUDGEMENT

1. RULE. Learned A.P.P., Mr.S.J.Dave, waived service of Rule for the respondent State.

2. This petition under section 482 of the Code of Criminal Procedure, 1973 is filed with a prayer to quash the F.I.R. dated 20.6.2000 registered as C.R. No.I-86 of 2000 in Gaekwad Haveli Police Station and Criminal Case No.725 of 2000 filed before the learned Metropolitan Magistrate, Court No.12, Ahmedabad reporting the offences punishable under sections 363, 366 and 376 of the Indian Penal Code against the petitioner.

3. It appears that the original complainant, the respondent No.2 herein, filed the aforesaid F.I.R. on 20.6.2000 alleging that the petitioner herein had kidnapped his minor daughter, namely, Hamidabanu -respondent No.3 herein- under a false pretext that he would marry her and thereby committed the offences punishable under sections 363 and 366 of the I.P.C. During the course of investigation, it was noticed that the petitioner had physical relations with the respondent No.3 and, therefore, the offence punishable under section 376 of the I.P.C. was also added subsequently and, thus, the chargesheet has been filed for the aforesaid offences.

4. The learned counsel for the petitioner submitted that false allegations were made in the said F.I.R. It is also submitted that the petitioner actually wanted to marry the respondent No.3 and they both have married and two children have also borne out of the said wedlock which is still intact. The learned counsel, therefore, contended that no offence was made out and the aforesaid F.I.R. resulting in the criminal case may be quashed.

5. Learned counsel Mr.Buddhdbhatti, appearing for the respondent No.2-complainant, has chosen not to press the complaint in view of the fact that the respondent No.3 actually married the petitioner on her own volition. This clearly shows that it was her willingness and consent to have physical relation with the petitioner when she was above the age of 16 years. Since the said relation took place on account of consent and willingness of the respondent No.3 after their marriage, no offence can be said to have been made out which would be punishable under section 376 of the I.P.C., according to the learned counsel.

6. Learned A.P.P., Mr.S.J.Dave, has, after going

through the papers of investigation, pointed out that the respondent No.3 voluntarily left the house of her father respondent No.2- and had voluntarily gone to stay with the petitioner. They have married and two children have also borne out of the said wedlock. In this view of the matter, according to the learned A.P.P., no offence punishable under sections 363 and 366 of the I.P.C. can be said to have been made out against the petitioner.

7. It is not in dispute that the victim of the alleged offence had completed 16 years of age on the date on which the alleged offence was said to have been committed. When the petitioner and the respondent No.3 have married and when they have two children borne out of that wedlock coupled with the fact that they are living a happy married life, it would be in the fitness of things to exercise the inherent powers and jurisdiction vested in this Court by section 482 of the Cr.P.C. for quashing the F.I.R. lodged and the consequent chargesheet filed against the petitioner.

8. In the result, the petition is allowed. The F.I.R. dated 20.6.2000 registered as C.R. No.86 of 2000 in Gaekwad Haveli Police Station and Criminal Case No.725 of 2000 filed before the learned Metropolitan Magistrate, Court No.12, Ahmedabad against the petitioner are quashed. Rule is made absolute with no order as to costs.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)